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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,782	07/09/2003	Hugh H. Trout III	23660-00654	8569
25243	7590	06/14/2004	EXAMINER	
COLLIER SHANNON SCOTT, PLLC			PANTUCK, BRADFORD C	
3050 K STREET, NW			ART UNIT	PAPER NUMBER
SUITE 400				3731
WASHINGTON, DC 20007				

DATE MAILED: 06/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/614,782	TROUT, HUGH H.
	Examiner Bradford C Pantuck	Art Unit 3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on November 20, 2003.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-18 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on July 9, 2003 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11-20-2003.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-18 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,865,791 to Whayne. Regarding Claims 1 and 13, Whayne discloses a delivery apparatus for performing a surgical procedure, including a flexible catheter (52/83), a penetration apparatus (66), and a fastener (116) in communication with (touching) the penetration apparatus [Figures 29, 32A, and 31C]. Pulling on steering mechanism (57) [see Fig. 29] causes the distal end of flexible catheter (52/83) to deflect to an angular configuration, as shown in Figure 7 of U.S. Patent No. 5,254,088 to Lundquist et al. Whayne incorporates the same steering mechanism (57) that was disclosed in this U.S. Patent No. 5,254,088 [Column 5, lines 50-54] into his device. Therefore, Whayne's delivery apparatus will deflect just as Lundquist's delivery device does.
2. Regarding Claims 2, 9, and 14, Whayne's device has an outer catheter (112) and an inner catheter (114) [Column 12, lines 1-20].
3. Regarding Claim 3, the tip of the penetration apparatus (66) is a hollow core needle [Figures 16A, 16B, 17, and 29; Column 7, lines 30-33].
4. Regarding Claims 4-6, 8, 10-12, and 15-7, Whayne discloses a sealant material/occluding substance/plug associated with the fastener [Column 12, lines 52-55]. The sealant material/occluding substance/plug can be material

such as silicone, collagen, mesh or even clotted human blood, as described in said passage.

5. Regarding Claim 7, mesh is capable of absorbing water.
6. Regarding Claim 18, Whayne discloses a method of performing a surgical procedure at a surgical site, including advancing a delivery apparatus to the site in the body and activating the delivery apparatus to apply a fastener to the surgical site [Column 12, lines 33-45; Figures 29 and 31A].

*Conclusion*

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 6,743,239 B1 to Kuehn et al.

U.S. Patent No. 5,042,707 to Taheri

U.S. Patent No. 6,730,108 B2 to Von Tassel et al.

U.S. Patent No. 4,741,330 to Hayhurst

U.S. Patent No. 6,048,331 to Tsugita et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradford C Pantuck whose telephone number is (703) 305-8621. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaver or McDermott can be reached on (703) 308-0858.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*BCP*  
BCP  
June 8, 2004

*David O. Reip*

DAVID O. REIP  
PRIMARY EXAMINER